

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8279 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VAJABHAI MANCHHABHAI GAMIT

Versus

STATE OF GUJARAT

Appearance:

MR SV PARMAR for Petitioner

(MR ANIL R DAVE) for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 24/12/96

ORAL JUDGEMENT

1. By this petition the petitioner, who is Range Forest Officer serving in the State of Gujarat, has interalia prayed that by appropriate writ the respondent-State should be directed to consider the case of the petitioner for his promotion to the post of Assistant Conservator of Forests and to promote him in pursuance of such consideration with retrospective

effect.

2. The petition has been admitted by the Division Bench but no interim relief as prayed for was granted. Since then, the petitioner is waiting its turn in this court. In this petition filed under Article 226 of the Constitution of India, the main grievance made by the petitioner is to the effect that he is unconstitutionally denied the promotion in violation of Articles 14 & 16 of the Constitution of India to the post of Asst.Conservator of Forests--a Cl.II Gazetted post. In order to appreciate the grievance of the petitioner it would be just and proper to state few relevant facts giving rise to the present petition at this stage which are being briefly stated as under:

(i) The petitioner, a candidate of ST appeared at the competitive examination held by the GPSC in the year 1977 for the appointment to the post of Range Forest Officer.

(ii) After due interview and following the process of selection, his name was recommended to the Government for his appointment as Range Forest Officer and communication to that effect was issued by the Chief Conservator of Forests on 20.12.1977.

(iii) Pursuant to such selection the petitioner was called upon to join the Training Institute, Pimpri on 1.1.1978 and he cleared the examination held by the said training institute and completed his training successfully. On completion of training he joined the Forest Department in the State Government as Range Forest Officer and with effect from 1.5.78 and pursuant to notification issued by the State of Gujarat, the duration of probation in the order expired on 23rd June, 1987, i.e. on the date when the petitioner passed the departmental examination. It is the case of the petitioner that the Range Forest as well as Asstt.Conservator of Forests are required to pass some departmental examination. Petitioner thereupon came to be appointed as Range Forest Officer on long term basis vide order of appointment issued by the Chief Conservator of Forests on 31st July, 1983. Petitioner even passed the departmental examination on 23rd June, 1987 for his higher promotion.

(iv) It is the case of the petitioner that the gradation list of seniority of Forest Range Officer as on 1.1.1986 came to be published by the State of Gujarat and therein the name of the petitioner appeared at page No.67 at Sl.No.3 as the petitioner by then had not completed 15

years of service with remark that the petitioner was not eligible for promotion.

(v) The respondent-State has framed Rules under Article 309 of the Constitution of India to provide for regulating recruitment to the post of Assistant Conservator of Forests by selection as well as by promotion. Said post is in Gujarat Forest Services Cl.II Gazette post. The Rules are called "Assistant Conservator of Forests (Gujarat Forest Services-Cl.II) Recruitment Rules, 1981 which would be referred to as such hereafter.

(vi) It is the case of the petitioner that he has been in every respect eligible and entitled to promotion to the post of Assistant Conservator of Forests as he was recruited under Rangers Recruitment Rules of 1977, he has undergone four months training conducted by the Government and has put in 15 years service as Ranger and passed prescribed departmental examination. He was, therefore, according to him entitled to be considered for promotion but he has been denied such promotion because of omission or accidental mistake of the authority making aforesaid rules as the authority has failed to make provision for Range Forest Officers who were recruited under Subordinate Forest Service (Special) Recruitment Rules, 1977(Pimpri). In substance, his grievance is that omission referred to the Recruitment of 1977 as Range Forest Officer Rules has resulted into violation of his right to equality granted by Articles 14 & 16 of the Constitution of India, and therefore, he is entitled to be promoted to the post of Assistant Conservator of Forests with retrospective effect.

3. Mr.S.v.Parmar, Ld.Advocate appearing for petitioner has vehemently urged before this court that the petitioner, a candidate of ST is being denied the equal opportunity in the matter of employment by his non-promotion to the higher post of Assistant Conservator of Forests, for no fault of his, but only for the omission of the State in not framing the subordinate legislation as per law and in making rules it failed to provide for appointees of the year 1977. It is his case that omission to mention the recruitment of 1977 as Range Forest Officer in the Recruitment Rules meant for promotion to the post of Assistant Conservator of Forests has unfortunately resulted into violation of equality of appointment guaranteed by Article 14 of the Constitution of India, and therefore, the petition deserves to be allowed with direction to the State Government to frame appropriate rules or amend appropriately the subordinate

legislation by mentioning Recruitment year 1977 as one of the years of appointees as Range Forest Officer to be considered for promotion to the post of Assistant Conservator of Forests. The omission to mention the year 1977 in the subordinate piece of legislation has, according to Mr.Parmar, Ld.Advocate for petitioner, resulted into violation of right of the petitioner under Articles 14 & 16 of the Constitution of India. Mr.Parmar very fairly submitted before the court that had the Rules been properly framed and the year 1977 been mentioned as the relevant year of recruits in the cadre of Range Forest Officers, the petitioner would have been, as a matter of course, entitled to promotion to the post of Assistant Conservator of Forests which is being denied to him solely on the basis of such omission in the subordinate piece of legislation and that therefore direction in that behalf only shall help the petitioner in seeking his promotion to the post of Assistant Conservator of Forests.

4. In order to examine the validity and soundness of the aforesaid submission of Mr.Parmar and the power and jurisdiction of this court to issue necessary direction in this behalf, it would be necessary at this stage to mention or refer to the gradation list of Range Forest Officers published on 1.1.1986 and which is produced at page 32 of compilation. Said gradation list, admittedly, is divided into three parts, two parts referring to Range Forest Officers recruited under the Rangers (Subordinate Forest Service)(Special) Recruitment Rules, 1973 (Sasan) and the third part referring to Range Forest Officers recruited under Rangers (Subordinate Forest Service)(Special) Recruitment Rules, 1973(Pimpri). It is in this third clause or category that the name of the petitioner is shown to appear at Sl.No.3 as one who is appointed to the post of Range Forest Officer with effect from 2nd May, 1978 with remark in the remarks column that he was not eligible for promotion as on the date of issuance of list of gradation because he has not completed requisite years of service in the cadre of Range Forest Officer. The fact remains that in the gradation list of Range Forest Officers the name of the petitioner appeared in the third category as a person who was not eligible for promotion to the post of Assistant Conservator of Forests as on that date he had not completed 15 years of service in the cadre of Range Forest Officer.

5. It is the case of the petitioner that necessary Rules under Article 309 of the Constitution of India are framed for recruitment to the post of Assistant

Conservator of Forests--Cl.II gazetted post. The Rules were framed initially in the exercise of powers under Article 309 of the Constitution of India and they were known as "Rangers (Subordinate Forest Service)(Special) Recruitment Rules, 1972. These Rules, inter alia, provided that the appointment to the post of Ranger under the Forest Department shall be made by promotion or by direct selection. Similarly, Rules were framed in 1977 which are captioned "Ranger (Subordinate Forest Service (Special) Recruitment Rules, 1977 and similar rules were also framed in the year 1973. It is the case of the petitioner that while framing the Rules or piece of subordinate legislation the authority has forgotten or omitted to amend the 1977 Rules which has resulted into nonconsideration of the petitioner for the post of Assistant Conservator of Forests and therefore appropriate directions are required to be issued to the State Government to amend the Rules properly so as to include the year of recruitment of the petitioner as the relevant year. Mr. Parmar, Ld. advocate for petitioner submitted that had such an omission been not made by the authority framing subordinate legislation the petitioner would have become entitled to promotion to the post of Assistant Conservator of Forests and would have been promoted to such post but such an omission has resulted into denial of equal opportunity in the matter of promotion to a candidate belonging to ST and therefore appropriate writ is required to be issued to the State to appropriately amend the Rules and thereafter to promote the petitioner to the post of Assistant Conservator of Forests with retrospective effect.

7. In my opinion, the submission is misconceived and shall have to be rejected as not maintainable in law. This court of law is not competent to issue any direction to the State Government or to the authority making subordinate legislation of a particular kind or to amend the subordinate legislation so as to include recruits of 1977 in the cadre of Range Forest Officers. Such directions to frame legislation or subordinate legislation is beyond the competence of this Court and as held by the Apex Court of this country the courts of law have no power or jurisdiction to issue directions to the State legislature or State authority to frame or amend appropriately the subordinate legislation. The position of law on the subject is well established when the judgment and order passed by the Himachal Pradesh High Court was quashed as unsustainable by the Apex Court and when the direction issued by the Hon'ble Chief Justice of Himachal Pradesh High Court to frame appropriate

legislation was quashed by the Supreme Court beyond the power of the Court under Article 226 of the Constitution of India. Judiciary itself is a separate organ of the State and it must confine itself to the judicial function assigned to it under the Constitution of India. Similarly, the legislature is a different organ of the State which functions according to the Constitution of India and frames law. Even the subordinate piece of legislation is being "law" within the meaning of Article 13 of the Constitution of India can not be directed to be framed or duly amended by issuance of writ by the court of law because in that case the court is taking upon itself the function which is essentially does not belong to the court of law. The function of the court of law is to decide the case which comes to it and to decide the legality and/or validity of Rules framed by the State Government, but it has no jurisdiction to direct the State Government to frame law or subordinate legislation. It is neither the duty nor the function of the judiciary and the Apex Court having pronounced upon the issue years back the matter is no longer resintegra and this court can not issue any direction as prayed for by the petitioner calling upon the State Govt to amend properly by including the year 1977 for to the post of Range Forest Officer as the relevant year to which the earlier framed Rules for promotion to the post of Assistant Conservator of Forests would apply. In fact, this exercise being prohibited can not be undertaken by this court under Article 226 of the Constitution of India and therefore this petition must fail on this ground alone. Mr. Parmar has only this submission to press but having found himself confronted with the aforesaid situation of law has no other submission to make but to request the court to recommend the State Government to appropriately amend the Rules.

8. The aforesaid was the only submission that was made before this court. The submission is without merits. It is constitutionally not permissible for this court to issue direction as prayed for by the petitioner. This court can not direct the authority making subordinate legislation to amend the subordinate legislation so as to include the recruits of a particular year. If there is omission, there is omission. If there is overstatement there is overstatement. The function of this court can not go beyond judicial function and can not travel in the area of directing the legislature to make law. It is the duty of the legislature to make law and it is constitutionally not permissible for the courts of law to issue such direction. Petition shall, therefore, fail and is liable to be dismissed and is

dismissed. No order as to costs. Rule is discharged.

9. However, the petitioner being a candidate of ST, having been appointed to the post of Range Forest Officer and has languished in the said post for no fault of his and has been denied promotion to the post of Assistant Conservator of Forests to which he is otherwise eligible for promotion both as per merit and criteria of eligibility as well as as per his position in the gradation list, it would be just and proper to recommend to the State Government to consider the case of the petitioner sympathetically with constitutional obligation cast upon it by Articles 14 & 16 of the Constitution of India and the respondents shall take appropriate action consistent with the philosophy underlying Articles 14 & 16 of the Constitution of India and shall redress the grievance of the employee coming from lower strata of the society and coming from ST, a constitutionally protected reserved tribe. Excepting the aforesaid recommendation, no further relief could be granted.

10. In the result, petition fails and is dismissed. Rule is discharged. No order as to costs. However, the aforesaid recommendation contained in last para of the judgment shall be issued to the respondents forthwith with the copy of the judgment to request the State Govt to consider the recommendation of this court and to take appropriate action so as to redress the grievance of the petitioner.

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